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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

September 24, 1991

Ms. Cynthia N. Milne
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR91-448

Dear Ms. Milne:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13045.

The Department of Banking (referenced to hereinafter as "the Department") received a request for "[a] list of all Funeral Trust Policy Holders" of two specific funeral homes. You indicate that your office possesses partial lists of individual prepaid contract holders for those funeral homes, which were submitted in connection with the Department's administrative functions. You seek to withhold the information under sections 3(a)(1), 3(a)(4), and 3(a)(10) of the Texas Open Records Act.

The primary purpose of section 3(a)(4) is to protect the government's interests in the competitive bidding process. Open Records Decision Nos. 583; 554 (1990). In fact, section 3(a)(4) applies only to bidding situations prior to the award of a contract. Attorney General Opinion JM-48 (1983). Consequently, the lists may not be protected by section 3(a)(4).

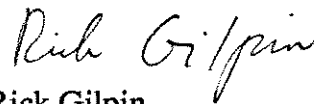
Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." It is well settled that section 3(a)(1) excepts information protected from disclosure by common law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex 1976), *cert denied*, 430 U.S. 931 (1977). Moreover, the common law right of privacy and section 3(a)(1) protection have been extended to financial information. See Open Records Decisions Nos. 545 (1990); 373 (1983) (copies enclosed).

In Open Records Decision No. 545 (1990), we held that "personal investment decisions appear to be of the kind of financial information that a person of ordinary sensibilities would object to having publicly disclosed." In addition, it was found that those investments, despite being administered by a governmental agency, were not ordinarily of legitimate public interest. *Id.* at 4.

Undoubtedly, the information in the Department's possession regards the personal investment decisions of many individuals. If the investments in Open Records Decision No. 545 are not of public interest, then certainly the information which you possess is also of no legitimate public concern. Accordingly, you may withhold the information under the protection of section 3(a)(1). We do not address the other exception to disclosure that you raised since we have resolved your request on the basis of section 3(a)(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-448.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/RNG/lb

Ref.: ID# 13045

Enclosures: documents; Open Records Decision Nos. 545 (1990); 373 (1983).

cc: Dick Walker
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